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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,822	12/10/2003	David Jeffrey Chodosh	51483/RVW/C987	2156

23363 7590 06/21/2007
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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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06/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,822

Applicant(s)

CHODOSH, DAVID JEFFREY

Examiner

Arthur L. Corbin

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Art Unit: 1761

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the original disclosure for the beverage regulator being "movable...the reservoir" (claim 1, last 2 lines and claim 14, lines 8-9). Correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-20 are indefinite since it is not clear to what "is movable...the reservoir" (claim 1, last 2 lines and claim 14, lines 8-9) refers. Is it the regulator or the connector? There is no antecedent basis in claim 14 or in claim 21 for "the lid portion" (claims 19, 20, 26 and 27). Corrections are required without new matter.
5. Claims 21 and 22 are objected to because of the following informalities: In claim 21, line 11, "and" (last occurrence) should be cancelled. In claim 22, last line, a period should be at the end. Appropriate correction is required.

Art Unit: 1761

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 8-14, 16-21 and 23-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Laulom et al (6,776,315) as set forth on pages 2-5 of the September 21, 2005 Office action.

9. Claims 3-7, 15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laulom et al as set forth on pages 5-6 of said Office action.

10. Claims 1-9, 11-16 and 18-27 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers (2,975,925, Figs. 1-3) in view of Gamblin (3,438,527, col. 1, lines 38-52) as set forth in paragraph no. 5, Paper No. 20070215.

11. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Gamblin as applied to claims 1-9, 11-16 and 18-27 above,

Art Unit: 1761

and further in view of Paulin (5,085,330, Fig. 2) or Bliss (6,209,737, Fig. 1 and col. 1, lines 42-48) as set forth in paragraph no. 6, Paper No. 20070215.

12. Applicant's arguments filed May 21, 2007 and the accompanying 131 declaration have been fully considered but they are not persuasive. This declaration also fails to establish diligence. Paragraph no. 8 of said declaration in conjunction with Exhibit E makes an attempt at diligence from February 22, 2003 to June, 2003. However, there is no June, 2003 date, especially June 19, 2003 (applicant's provisional filing date) disclosed in said Exhibit E. Further, there is no factual evidence therein that the cup lids discussed in Exhibit E are equivalent to applicant's claimed invention.

Applicant has also failed to meet the requirement set forth in paragraph no. 8, Paper No. 20070215 since Exhibit B of said declaration still does not provide detailed evidence of what transpired between applicant and "OddzOn".

Applicant's remarks, regarding the rejection based upon Chambers and Gamblin, are without merit. Applicant's assertion that the regulator "is also movable and allows the beverage...reservoir" is more specific than applicant's claim language wherein this limitation is claimed as an alternative function of the regulator rather than as an additional function. Further, the straw in Gamblin allows the beverage therein to enter the reservoir and will also prevent it from exiting. In this regard, applicant is referred to valve 31 in Gamblin which performs these functions. Additionally, according to col. 1, lines 38-52 of Gamblin, a straw having an elastic hollow device which acts as a valve, performs the same function as applicant's regulator.

Art Unit: 1761

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1761


published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L Corbin
Primary Examiner
Art Unit 1761

6-18-07